

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GOTHAM FRESH LLC *doing business as*
D'ARRIGO BROS. CO. OF NEW YORK,
INC.,

Plaintiff,

v.

NATIONAL GROCERY CO. INC., *doing*
business as C-TOWN AVENUE U, and
RADI HAMDAN, *individually and in any*
corporate capacity.,

Defendants.

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No. 19-CV-6550 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

Plaintiff Gotham Fresh LLC filed this action on July 15, 2019. On July 22, 2019, the Court granted Plaintiff's motion for a preliminary injunction, directed the Clerk of Court to hold the entry of judgment in abeyance for two weeks, and ordered Plaintiff to serve Defendants with certain documents listed in the Court's July 22, 2019 order (Dkt. 7) by July 24, 2019. On August 1, 2019, the Court directed the Clerk of Court to continue to hold the entry of judgment granting Plaintiff's motion for a preliminary injunction in abeyance until Plaintiff served Defendants with the aforementioned documents (*see* Dkt. 9). As of October 4, 2019, Plaintiff had not filed proof of service of those documents. On October 4, 2019, the Court thus ordered Plaintiff to inform the Court of its efforts to serve Defendants and whether it intends to continue to prosecute this action (*see* Dkt. 11). Plaintiff did not respond to the Court's October 4th order. On October 22, 2019, the Court ordered Plaintiff to inform the Court, no later than November 5, 2019, whether it intends to pursue this action, and advised Plaintiff that if the Court did not receive a response by that date, it would dismiss this action pursuant to Federal Rule of Civil Procedure 41 for failure to prosecute (*see* Dkt. 12). To date,

Plaintiff has not responded to the Court's October 4th or October 22nd orders, nor has it otherwise indicated that it intends to pursue this action.

Rule 41(b) of the Federal Rules of Civil Procedure provides that a district court may dismiss an action if "the plaintiff fails to prosecute or otherwise comply with [the] rules or a court order." Fed. R. Civ. P. 41(b); *see also Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). Under Rule 41(b), a district court may dismiss an action *sua sponte* for failure to prosecute after notifying the plaintiff. *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Because the Court has not received any response from Plaintiff, including any indication that it intends to pursue this case, the instant action is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b). The Clerk of Court is respectfully directed to close the case.

SO ORDERED.

Dated: November 12, 2019
New York, New York



Ronnie Abrams
United States District Judge